

law respecting an establishment of religion, or prohibiting the free exercise thereof," did they mean to banish prayer from the public schools?

The answer, as Robert M. Healey makes plain in his "Jefferson on Religion in Public Education," is that they weren't that definite. Since Thomas Jefferson was the moving spirit behind the adoption of the Bill of Rights, which included the first amendment, surely he must have had something important to say on the scope of the religious clause to which the founders would have given assent.

Jefferson's oft-quoted phrase about "building a wall of separation between church and state" has been taken by a majority of the present Supreme Court Justices to mean that he was a strict, a very strict, constructionist in the matter of the first amendment. By strict constructionism public school prayer would be out. But Professor Healey, who teaches at the University of Dubuque Theological Seminary, has diligently searched through all of Jefferson's writings on the subject of religion and education and found little to justify the Supreme Court's most recent stand.

Like others of the American Revolutionary generation, Jefferson wished to have no part of a state church. On the other hand, Jefferson was a religious man. He believed that the order, or the design, of the universe proved the existence of God, and he never tired of referring to God as the "Giver of Life," the "Author of Morality," the "Author of Nature," the Benevolent Governor of the World," and the "Creator, Preserver, and Supreme Ruler of the universe."

#### CHILDREN AS MORAL BEINGS

As a theorist of education, Jefferson conceived it to be the duty of the public schools to train children as moral beings, endowed as such by the Creator. Though Jefferson considered it entirely possible for atheists to have a good moral sense, he himself felt that "primitive Christianity," as exemplified by the life of Jesus, had much to say on the subject of morality. And he was not for excluding this from the schools.

The proof? Professor Healey finds it in a number of places in Jefferson's proposals for building a tax-supported system of primary, secondary, and university education for his own State of Virginia. For example, at one point, Jefferson hoped to bring the College of William and Mary under State control. In outlining a curriculum for the college he advocated that two professorships of divinity be abolished. But he urged that the college maintain "a perpetual mission among the Indian tribes" which, among other things, would "instruct them in the principles of Christianity."

Again, in a proposed curriculum for the University of Virginia which was drawn substantially as Jefferson had written it, provision was made for the "professor of ethics" to present "the proofs of the being of a God, the Creator, Preserver, and Supreme Ruler of the Universe, the Author of all the relations of morality, and of the laws and obligations these infer."

Thus it can be seen that Jefferson did not interpret the first amendment to mean the exclusion of references to God or Christianity in State-supported schools. What Jefferson, along with his friend and colleague James Madison was worried about was sectarian domination of public education.

In a letter to Thomas Leiper, written toward the end of his second Presidential term, Jefferson said: "The moral branch of religion which is the same in all religions . . . instructs us how to live well and worthily in society."

#### A BENEVOLENT DEISM

Jefferson, in short, was a man of his times, which were favorable to the feeling that the squabbling of the sects might give way to a benevolent deism in religion in

which the things that were common to all faiths would be stressed and doctrinal differences would be forgotten. Quite unconsciously, so Professor Healey says, Jefferson wanted to put the force—and the money—of the State behind the fostering of his own "general religion" of "peace, reason and morality." Inasmuch as this type of religion called for no organized church, Jefferson did not think of its presence in the schools as having anything to do with "an establishment of religion."

Since Jefferson's day the benevolent hopes of the deists have been rudely shattered. But this still does not mean that the Founding Fathers were averse to opening the school day with a very general prayer, or that they were against mentioning the fact in school that morality can have a religious base. On Professor Healey's showing, the author of the Bill of Rights and his friends were merely against making the priests of any single sect into officers or favored beneficiaries of the State.

JOHN CHAMBERLAIN.

#### A WAR MATERIEL BLOCKADE OF CUBA?

Mr. MILLER. Mr. President, over 2 years ago, reports were widely circulated that secret shipments were being received at Havana from Soviet vessels, and that some of the crates being unloaded were large enough to hold aircraft assemblies or missile parts. At that time, the Secretary of State, Mr. Christian Herter, was attending a meeting of the Organization of American States. I called upon him to urge that, in concert with the Organization of American States, a blockade be imposed upon Cuba with respect to war materiel. I suggest that all other items—food, clothing, medical supplies, industrial equipment, and the like—be exempt from the blockade. It was to be a blockade, with no war materiel into Cuba and no war materiel out of Cuba. Unfortunately, my plea was apparently ignored. In any event, I have received no information to indicate that the idea was ever even proposed—formally or informally—at the meeting.

Since that time, there have been several developments. The meeting of the OAS at Punta del Este, Uruguay, last January, revealed a deplorable lack of unity over the threat of world communism—a situation which might well have precluded Mr. Herter from making an effort to pursue my suggestion a year and one-half earlier. The Alliance for Progress has been launched, without any apparent effort to premise it on unified action on the Communist takeover of Cuba. President Kennedy has intimated that we would go it alone, if necessary, should the other members of the OAS persist in their apathy and should the situation in Cuba become sufficiently serious with respect to our security. A Soviet-initiated crisis over Berlin has arisen, and, despite the wishful thinking of some writers, has not cooled off, but has continued to smolder dangerously. Some 50,000 tons of war materiel have poured into Cuba from Communist-bloc nations, putting the international Communist conspiracy in firmer control than ever. And now we learn that since June some 61 vessels have unloaded more war materiel and some 5,000 Soviet technicians, including 3,500 Soviet-bloc mili-

tary men, into Cuba. The President has recognized the situation, by warning Cuba against aggressive action in this hemisphere, while at the same time saying that this Soviet assistance was not of an offensive character. Perhaps it was intended that the American people be reassured that there is nothing to worry about over the Cuban situation; but if this was the intention, one wonders why it was necessary for a warning to be issued to Cuba. Also, one wonders why no warning was issued to the other nations involved in this penetration by the international Communist conspiracy of the Western Hemisphere.

The situation is further complicated by the Berlin situation, for we all know that the Communist-inspired crises around the world are a part of an integrated plan of aggression against the free world.

The President has been silent over the question of whether the Monroe Doctrine has been violated; if it has been, what is to be done; and where the line is to be drawn if, in his opinion, there has as yet been no violation. Inasmuch as the line between offensive and defensive war materiel can be very fine—especially if so-called defensive weapons are to be transshipped to feed the fires of revolution, infiltration, or guerrilla warfare in Western Hemisphere countries, and inasmuch as it is officially recognized by our Government that the Soviet-bloc nations are part of the international Communist conspiracy to aggressively overthrow the free world nations, it would appear that merely to split hairs over the question of the "offensive" or "defensive" character of the war materiel involved is of little practical use.

The question which thus arises is whether a blockade of war materiel should be invoked.

The answer should not be the easy-way-out statement that such a blockade would be an act of war. Nor is it any response at all to say, as the President did, that it would be a mistake to invade Cuba at this time. It is partially responsive to suggest that such action might lead to reprisals by the Soviet elsewhere—in Berlin, for example. But such a suggestion implies such a weakness of the administration over Berlin as would cause the Soviets to think that these so-called reprisals would be tolerated. Furthermore, our position in West Berlin bears no resemblance whatsoever, from the standpoint of agreements and rights arising from conquest, to the Soviet position in Cuba.

I think it is time, Mr. President, to point out that a war materiel blockade of Cuba, now in control of the international Communist conspiracy, is not an act of war. Once this myth is cast aside, the situation can be viewed in a more realistic light.

The imposition of a limited blockade of war materiel under the circumstances existing in Cuba raises the question of the extent to which such a blockade would be permissible under the Charter of the United Nations. Article 2, paragraph 3, of the charter provides that

All members shall settle their international disputes by peaceful means in such

a manner that international peace and security, and justice, are not endangered.

Paragraph 4 of the same article provides that—

All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations.

Offhand, it might be argued that a so-called Pacific blockade is a threat of force or use of force against the territorial integrity or political independence of the state blockaded. However, inasmuch as Cuba is clearly under the control of the international Communist conspiracy, the answer could be given that its political independence no longer exists.

Article 51 of the U.N. Charter provides as follows:

Nothing in the present charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security.

It has been argued that it is an extreme view to assert that "resort to force by a member is unlawful, regardless of any wrongs or dangers which provoked it, and that if no collective United Nations relief is available, the member may still have to submit indefinitely without redress to the continuance of these wrongs and dangers," Stone, "Aggression and World Order 95, 1958." The question, then, is whether a blockade limited to war materiel—which is a use of force under paragraph 4 of article 2—is a measure of self-defense under article 51. It has been argued that "to exclude action taken against an imminent danger but before an armed attack occurs bears no relation to the realities of a situation which may arise prior to an actual attack and call for self-defense immediately if it is to be of any avail at all. No state can be expected to await an initial attack which, in the present state of armaments, may well destroy the state's capacity for further resistance and so jeopardize its very existence," Bowett, "Self-Defense in International Law 191-92, 1958."

Here is where the fine line must be drawn between what is "imminent" and "not imminent," and between what are "defensive" and "offensive" weapons. I suggest that the installation of ground-to-air missiles, the provisioning of Mig fighters, and tons and tons of small arms and ammunition cannot be justified as necessary to the "defense" of Cuba. Moreover, as long as the governing authorities of Cuba represent the international Communist conspiracy, the aggressive character of that Government is clear; and the "imminence" of the threat of attack by such an aggressive Government, especially as a mere agent for the power of Moscow, is as "imminent" as the power of Moscow decides to make it. Another point should be made with respect to the excessive amount of war materiel being shipped into Cuba. If it is not to be used against the United States—although only Soviet Russia will

make that determination—then it exists as a ready source of supply for purposes of revolution, infiltration, or guerrilla activities in other nations in the Western Hemisphere. This poses a threat of armed attack which would be clearly in violation of the Monroe Doctrine. In 1947, the United States took the view that furnishing of war materiel by Albania, Bulgaria, and Yugoslavia to guerrilla forces in Greece fighting against the Greek Government constituted an "armed attack" by those states on Greece—see Kelsen, "The Law of the United Nations 798, 1951." I suggest that a threat to do so falls within the concept of "armed attack" as enunciated by Bowett, previously referred to.

Another point that is to be made is with respect to the provision in paragraph 4 of article 2 against the use of force against "the territorial integrity or political independence" of any State. I have already pointed out that Cuba, being under the control of the international Communist conspiracy, no longer has "political independence." The international Communist conspiracy has already violated paragraph 4 of article 2, insofar as it has, through the use of force, taken over control of the territory of Cuba. Accordingly, the Soviets, representing the headquarters of the international Communist conspiracy, are in no position to complain against a war materiel blockade which would be calculated to prevent them from continuing the violation of the territorial integrity of Cuba.

One final argument should be made. Professor Stone suggests that there may be cases in which the failure of the collective-measures procedures of the Charter to successfully meet infringements of the rights of States may give rise to a right to use self-help outside article 51, to protect those rights. This would seem to be particularly applicable to cases involving a violation of the Monroe Doctrine, and more particularly to a violation by the international Communist conspiracy. Goodrich and Hambro also support Professor Stone's position, as follows:

The provisions of article 51 do not necessarily exclude the right of self-defense in situations not covered by this article. If the right of self-defense is inherent as has been claimed in the past, then each Member retains the right subject only to such limitations as are contained in the Charter.

Goodrich and Hambro, "Charter of the United Nations 301, 1949." The authors caution, however, that abuses could arise from unilateral action pursued under this doctrine.

From what I have said, Mr. President, I trust it is clear that a war materiel blockade is not "an act of war" either under the U.N. Charter or under the inherent right of self-defense. I emphasize that this is particularly true when we are dealing with a country that is without political independence and has become but a mere subdivision of the international Communist conspiracy.

It is time to recognize the international Communist conspiracy for what it is—an aggressive, ruthless, godless, monolithic force bent on destroying the free world, with the United States as its No. 1 target.

It is time to realize that firmness, backed by the necessary power, is the only effective way to stop this aggressive force.

And it is time to make clear that whether our rights in Berlin or our rights under the Monroe Doctrine are transgressed, all necessary action to put a stop forthwith to such transgressions will be employed.

I yield the floor.

Mr. PROXIMIRE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. SMITH of Massachusetts in the chair). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SMATHERS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### SELF-EMPLOYED INDIVIDUALS TAX RETIREMENT ACT OF 1961

The Senate resumed the consideration of the bill (H.R. 10) to encourage the establishment of voluntary pension plans by self-employed individuals.

Mr. SMATHERS. Mr. President, H.R. 10 relates to the retirement needs of self-employed individuals. It would enable self-employed individuals to establish qualified retirement plans for their own benefit and for the benefit of their employees if there are any. Under existing law, since 1942, self-employed individuals have been denied the benefits of qualified retirement plans because technically they are not employees, although corporate owner-managers are permitted to participate in retirement plans created by their corporation. Enactment of this bill will eliminate this discrimination against more than 7 million self-employed individuals which has continued for 20 years.

Legislation to correct this discrimination has been proposed in various forms since 1947. It has been the subject of many hearings and considerable deliberation by the tax committees of Congress over the last 10 years. Specifically, the Ways and Means Committee held public hearings on the subject in 1952, 1953, 1955 and again in 1958. In 1959, panel discussions were held by the Ways and Means Committee. The Committee on Finance held public hearings on this subject in 1959, 1960, and in 1961.

In various forms, H.R. 10 has been ordered reported by the Ways and Means Committee in four separate Congresses, has passed the House three times, and has been favorably reported by the Committee on Finance on two occasions. This brief legislative history is indicative not only of the considerable attention Congress has given the problem through the years but also of the tremendous work that has gone into writing this particular legislation.

The bill now before the Senate is the culmination of many years of work by the tax committees of the Congress. It represents an acknowledged improvement over prior versions of the legislation.